

Michel Vermote, Vozvrashchenie niotkuda. Restitutsiia pokhishchennykh bel'giiskikh kollektsii. In: **Trudnaia sud'ba kul'turnykh tsennostei. Materialy mezhdunarodnoi konferentsii "Chastnoe pravo i problemy restitutsii peremeshchennykh kul'turnykh tsennostei". Moskva, 27 i 28 maia 2002 g. / Das schwierige Schicksal von Kulturgütern. Materialien der internationalen Konferenz 'Privatrecht und Probleme der Restitution von kriegsbedingt verbrachten Kulturgütern'. Moskau, 27. und 28. Mai 2002, Moscou: Rudomino / Berlin: BWV–Berliner Wissenschafts-Verlag, 2003, p. 155-161.**

International Seminar

Private law and issues of restitution of cultural valuables

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"Napoléon examina chaque chose très attentivement et annonça au garde général son intention de faire transférer à Paris les archives des pays conquis. Il pensait que les copies qui en seraient demandées par la suite produiraient des revenus considérables."

M.A.Taillandier:"Documents biographiques sur P.C.F.Daunou.",
Paris,1841, p.134.

I just received confirmation that the Belgian military convoy delivered the archives restituted to my country in Brussels this morning. According to the restitution agreement, signed in March last year¹, 40 “fonds” were loaded at the Osoby-archive last week². In all we are talking of 20.000 files or more than 60.000 kilo of paper³.

These returned records are only a small part of the plunder in Belgium by the German occupying forces during the Second World War. Both public and private archives were confiscated for military, political and ideological reasons⁴. Most of the records returned belong to the Ministry of Defence. The other deversified material -with great potential for research- belonged to declared enemies of the Third Reich, mainly Freemasons, Jews and socialists. Private organisations and individuals are involved here⁵.

I have followed the Belgian restitution case very closely from the beginning. I first saw -together with my Amsab-colleague Wouter Steenhaut- the records that we had considered to be lost forever at the Osoby-archive in '92⁶. And we were later asked to join the mission of

our Ministry of Foreign Affairs as experts about the private archives and collections. But I am not an expert on legal issues. For that aspect we could depend on the judicial service of our Foreign Office.

In this contribution I can share the experience on the Belgian restitution case with you, and – more important to the subject of the conference- make some remarks and formulate considerations concerning the legal context of the whole affair.

A first important remark in that sense is that from the start it was decided in Belgium to combine efforts, and not to submit any individual claims. Rather to include the restitution demands of the private sector into the general claim. Hence claims for private and state records were to be handled on the governmental level as restitution from country to country. This early decision could not take into account the legal situation in Moscow, because when we started the Russian legal arrangements were unclear. The main consideration was not to complicate things – and also to avoid conflicting Belgian claims in Moscow that would have been not only confusing but also weakening the Belgian negotiating position.

This also meant that - from the beginning – the distribution of the different archival collections was considered to be an internal Belgian matter, to be handled in Brussels (on the basis of identification of course) and according to Belgian private law.

We did not want our Russian counterparts to take part in that discussion.

The only “proof” we were willing to provide was that of the Belgian origin of the records. This should provide a sufficient basis for restitution (according to international law) from country to country.

In this respect research on the confiscation by the German occupying forces became a very important issue. This basis work of reconstruction was greatly advanced when in 1995 we found (thanks to Patricia Grimsted) essential records in the Central State Archive in Kiev⁷. The files of the activities in Belgium of the most important German plundering organisation, the Einsatzstab Reichsleiter Rosenberg⁸ (ERR) included an exceptional document that gave us a chronological overview of all ERR-actions from 1941 to 1943⁹. By putting together these new data from previously inaccessible Nazi files, and the information – including SD files we found among RSHA records in Moscow¹⁰ – which had already been available in Western Europe, we could establish a database that proved to be very important tool in our approach of restitution problems¹¹. The data not only provided “proof” -in the judicial sense- but also enabled us to ask the necessary mandates from the persons and private organisations involved.

I remark that out of more than 200 names of Belgian victims of Nazi confiscations in our database only 25 could be found on the Osoby-list of Belgian archival holdings...

With the mandates mentioned, we were fully equipped to handle the final stage, starting in '99¹², of the restitution-saga. The approval of the mandates by our Russian counterparts -with the agreement in March 2001 -was an important step to us, although we knew that more research was needed for the exact identification of the creators of the different archives; this is the lawful owners.

This approach had the considerable advantage to allow us to decide the final destination¹³ of archival materials that were difficult to retrace first. When the Russian side is too much involved in such matters, it not only complicates things (translations, etc.) but also means that in case of any doubt on the final destination in Belgium the questionable files stay in Moscow (which is the case at the moment with part of the Dutch claims).

This approach is also based on the fact that -and this is an important consideration in judicial respect- in our view there never was a legal transfer of property to the Nazi's or to the Soviets.

This point of view is confirmed by several international conventions and agreements such as the Interallied Declaration of London in 1943. We have always believed moreover that international law should take precedence over national legislation. The fact that the Russian restitution law of April '98 established the Belgian archives as part of the Russian cultural heritage could only merit our profound indignation. In our opinion the people in charge at Rosarkhiv or the former Osoby Archive should be aware of the fact that they do not own these records. They have taken responsibility over them – for sure – but they are handling material that is (or was) kept illegally in Moscow.

In these circumstances it is not appropriate for Russian archivists to take part in the discussion of the rightful ownership in the country of origin. Moreover I can witness that the necessary and essential information on the provenance and migration of the Belgian archives is not openly available here in Moscow. Although GARF and RGVA (Osoby) must dispose of such evidence, they are very sparing with it. I sometimes had the impression that we were asked to provide proof of what is hidden somewhere in the administrative files of the archival institutions themselves.

To conclude some general remarks:

France (in 1992 and 2000)¹⁴ and The Netherlands (2001)¹⁵ are two other examples of recent restitutions from the Russian Federation. And in these cases too, Rosarkhiv succeeded in

bargaining a price that had to be paid for the “storage and conservation costs”. I can assure you that the whole procedure of restitution was blocked as long as our Foreign Office took a harsh attitude in this respect. It was only when the approach became more pragmatic that things began to progress. At that time we made it clear that our mandates did not allow any financial engagements. So in the end the Belgian State had to pay the sum of 130,000 dollars to Rosarkiv for storage and the Belgian government had never contracted for¹⁶. This is more or less the same price that The Netherlands paid for one eighth of the volume of the Belgian archives.

Moreover the whole operation had to be represented as a mutual exchange of archives: Belgium was asked to hand over archives of Russian origin that were deposited by a private organisation at the Museum of the Army and that could not be legally transfer... They are now being microfilmed by the Royal Museum of the Army in Brussels.

Another remark is that not all the Belgian archival material has as yet found its way back home. There are some important files of Belgian provenance that were transferred to the State Archive of the October Revolution (GARF), to the former Institute of Marxism-Leninism (now RGASPI) and to the archives of the former KGB, as clearly indicated in the inventories in the Osoby-archive. Restitution of these records was refused with inadequate explanation¹⁷. At GARF we were even refused to do further research on one of their fonds.

More important in quantity -compared to that- is the printed materials that was separated out of the original archival fonds at the Osoby-archive. To our motivated demand (in April 2001) to reintegrate these essential parts in the archival fonds we just got an njet... (until now)¹⁸

And although we succeeded in introducing an “open end-clause” in our restitution agreement¹⁹, I think the chance was missed here to reprocess or reconstruct the Belgian archives before restitution.

So, it is with mixed feelings that I look back to our archival adventures in Moscow. But there is after all of course satisfaction on the final result of the restitution and above all there is the very positive experience of the cooperation -over the years- with our Russian colleagues most of them on the executive level. They understood our point of view; also from a correct deontological approach of the problem²⁰. This cooperation was based on a mutual respect and draws its strength from a common concern for our historical heritage. I must thank them very sincerely for that.

Michel Vermote

Moscow, 27 May 2002

NOTES

¹ 'Protocole des négociations entre les représentants du Ministère des Affaires étrangères, du Commerce extérieur et de la Coopération internationale du Royaume de Belgique et du Service Fédéral des Archives de Russie, relatives à la restitution des archives d'origine belge déplacées conservées dans les Archives Fédérales d'Etat de la Russie', Moscou, le 15 mars 2001. - 3 p. -

² *Archives to Belgium*, in: *Moscow Times*, May 16, 2002, p.4.

³ 'Lijst van archief- en documentatiemateriaal van Belgische origine dat in aanmerking komt voor restitutie in het kader van de overeenkomst van 15 maart 2001 tussen de Russische federatie en de Belgische staat', Gent, 23 april 2001. - 41 p. -

⁴ Lust J., Maréchal, E., Steenhaut W. Vermote M., *Een Zoektocht naar Archieven. Van NISG naar AMSAB*. Gent; AMSAB, 1997. - 199 p. - Steenhaut W. & Vermote M., *The fate of the archives and books of the Belgian socialist movement*, in : *The Return of Looted Collections (1946-1996) : an Unfinished Chapter. Proceedings of an International Symposium to Mark the 50th Anniversary of the Return of Dutch Book Collections from Germany in 1946 (Amsterdam, 15 and 16 April 1996)*. Amsterdam; Stichting Beheer IISG, 1997, pp. 75-86. Lust J., *De Einsatzstab Reichsleiter Rosenberg en de bibliotheekroof in België (1940-1943)*, Brussel, Studiecommissie Joodse Goederen, 2000. - 27 p.-

For a general approach of the politics of war looting (and restitution) see the different publications of Patricia Kennedy Grimsted. Most recent there is Grimsted P: *Trophies of War and Empire. The Archival Heritage of Ukraine, World War II, and the International Politics of Restitution*, Cambridge - Massachusetts, Harvard University Press, 2001. - 749 p.-, her "Opus Magnum" on the subject, also relevant to other occupied countries.

⁵ M. Mukhamedjanov (ed.), *Fondy bel'giiskogo proiskhozhdeniia: Annottirovannyi ukazatel*, Moskba, TsKhIDK, 1995. - 26 p. -(Flemish translation: *Fondsen van Belgische herkomst: verklarende index*, Gent, Amsab, 1997. - 20 p. -).

⁶ Steenhaut W. & Vermote M., *Mission to Moscow. Belgische socialistische archieven in Rusland*, in: *Amsab-Tijdingen*, zomer 1992, nr.16. - 24 p. -, Gotovitch J., *Moet de geschiedenis herschreven worden? Over de archieven van Moskou*, in: *30-50*, najaar 1993, nr.23, pp. 4-7.

⁷ Central State Archives of the Higher Government Bodies (Kiev): fonds 3674 and 3676, comprising a major share of the archive of the ERR – Hauptarbeitsgruppe Belgien und Nordfrankreich.

⁸ Einsatzstab Reichsleiter Rosenberg: special commando under Alfred Rosenberg responsible for most of the archival plunder under German occupation, in Belgium from August 1940 on.

⁹ *Übersicht über die Arbeitsvorhaben der Arbeitsgruppe Belgien in zeitlicher Reihenfolge*. - s.l., (1943) in TsDAVO (Kiev): 3676/1/164

¹⁰ Russian Military State Archive (former Osobyi-archiv). Fond 500: Reichssicherheitshauptamt (Berlin) 1933-1945 (3005 files). The German intelligence service (Sicherheitsdienst - SD), that was integrated in the Reichssicherheitshauptamt (RSHA) was involved in the confiscation of records of opponents of the Nazi regime.

¹¹ From the database a regularly updated temporarily overview was printed: *Niet-exhaustieve lijst van van archief- en bibliotheekmateriaal in beslag genomen in België tijdens de Tweede Wereldoorlog*, Gent, Amsab, 2001. - 14p. -

¹² After the arrest of the Russian High Court in July 1999 and even before the new amended restitution law (of 15 April 1998) was voted in May 2000, the Belgian Minister of Foreign Affairs, Louis Michel, on official visit in Moscow in November 1999, received the guarantee that the Russians were agreeing on the principle of archival restitution. From then on the negotiations that were interrupted since 1993 were taken up again by the Ministry of Foreign Affairs.

¹³ Which could for example be temporarily deposited in an institution in our country, with the intention to retrace the rightful ownership. In the meantime the archival material could already be available to researchers.

¹⁴ Coeuré S., Monier F., Naud G., *Le retour de Russie des archives françaises. Le cas du fonds de la Sûreté*, in : Vingtième Siècle. *Revue d'histoire*, n°45, janvier-mars 1995, pp. 133-139. Sibille C., *Les archives du ministère de la guerre récupérées de Russie*, in : *La Gazette des Archives*, 1997, 176, pp.64-77. Devaux D., *Les archives de la Sûreté rapatriées de Russie*, in : *La Gazette des Archives*, 1997, 176, pp. 78-86. Mollier P., *Paris-Berlin-Moscou. Les archives retrouvées*, in : *L'Histoire*, n° 256, juillet-août 2001, pp. 78-82.

¹⁵ Ketelaar E., *Nederlandse archieven in Moskou. Winterslaap ten einde*, in: *Nederlands Archievenblad*, augustus 2001, pp.36-39.

¹⁶ 'Protocole des négociations entre les représentants du Ministère des Affaires étrangères, du Commerce extérieur et de la Coopération internationale du Royaume de Belgique et du Service Fédéral des Archives de Russie, relatives à la restitution des archives d'origine belge déplacées conservées dans les Archives Fédérales d'Etat de la Russie', Moscou, le 15 mars 2001, article 4 : « Les Parties se sont accordées sur les principes de la gratuité de restitution des archives et ont reconnu la nécessité d'une compensation des frais du RGVA par la Partie belge équivalent à une somme de 130.000 (cent trente mille) US Dollars conformément à la loi fédérale (...). Ce montant couvre toutes les sommes imputables à la Partie belge au titre de la compensation due au RGVA et constitue la totalité des sommes dont le paiement peut être réclamé à la Partie belge. ». It is important to mention that for incomprehensible reasons, copies of the inventories of the restituted archives were not included into the "deal".

¹⁷ Letter from V.P.Kozlov, Director of Rosarkhiv to the Head of the Archival Department of the Ministry of Foreign Affairs, 17 January 2001 concerning the files transferred to GARF en RGASPI: "The materials mentioned in Part III of the list (of demanded archives- M.V.) must be searched in other archival institutions. Among these, there are institutions that do not

fall under the jurisdiction of Rosarkhiv". This observation is not applicable to GARF and RGASPI.

In an note attached to a letter (11 July 2001) from V.P. Kozlov to the Belgian ambassador Mernier, the director of Rosarkhiv declares that the records at GARF (in fond 7007), RGASPI (in fonds 224, 225 & 231) and RGALI (?) were gathered from different sources and cannot be considered to be of Belgian origin. This information could not be verified at GARF where in April 2001 the consultation of fond 7007 was refused: "till after the restitution to Belgium". It should be mentioned that this explanation of Rosarkhiv does not take into account the records transferred from the Osoby-archives n° 18 and 19 we were aiming at.

¹⁸ It concerns printed material which originally was a part of one of the Belgian fonds. It can be defined as 'printed archives', cf.: Walne, P. (éd.) *Dictionary of Archival Terminology – Dictionnaire de terminologie archivistique. English and French. With Equivalents in Dutch, German, Italian, Russian and Spanish*. New-York, London, Paris, Munich, K G Saur, ICA Handbooks Series (vol. 3), 1988 (2nd ed.), p. 122, item 355.

In an explanatory note (*L'Expertise du matériel imprimé conservé aux Archives militaires de l'Etat russe: approche et procédure pratiques*, 23 April 2001) accompanying the list of Belgian material, we gave an indication of the criteria that could be handled in order to determine the origin of such material, as well as a proposal of a practical approach for the reintegration of this material into the original archival context on the basis of the principle of provenance. Until now there was no official reaction to this proposition.

As a result of our initial demand in April 2001 we were urged at a very disappointing meeting at Rosarkhiv to provide proof for every single item demanded. Only the presence of stamps and bookplates was accepted as evidence.

¹⁹ 'Protocole des négociations entre les représentants du Ministère des Affaires étrangères, du Commerce extérieur et de la Coopération internationale du Royaume de Belgique et du Service Fédéral des Archives de Russie, relatives à la restitution des archives d'origine belge déplacées conservées dans les Archives Fédérales d'Etat de la Russie', Moscou, le 15 mars 2001, article 8 : « Les Parties ont reconnu que le contenu de la liste-inventaire évoquée sous point 3 reste toujours susceptible d'accroissements, en fonction d'éventuelles découvertes ultérieures et que les modalités pratiques de ces éventuelles restitutions seront négociées par les Parties en temps opportun ».

²⁰ 'Deontological code of the International Council on Archives', article 2: "Archivists should appraise, select and maintain archival material in its historical, legal and administrative context, thus retaining the principle of provenance, preserving and making evident the original relationships of documents". The explicative note clearly states: "They should not seek or accept acquisitions when this would endanger the integrity or security of records; they should cooperate to ensure the preservation of these records in the most appropriate repository. Archivists should cooperate in the repatriation of displaced archives."